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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Assessment and Collection
of Regulatory Fees for
Fiscal Year 1997

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MD Docket No. 96-186

**COMMENTS OF
RAM MOBILE DATA USA LIMITED PARTNERSHIP**

RAM Mobile Data USA Limited Partnership ("RMD"), by its attorneys, hereby submits these comments regarding the above-referenced Notice of Proposed Rulemaking ("NPRM").

DISCUSSION

In the NPRM, the Commission has proposed a series of changes to its regulatory fee schedule. Two facets of the NPRM are of particular concern to RMD.

First, under the schedule proposed in the NPRM, and due to the reclassification of SMR services as CMRS,¹ RMD will be required to pay regulatory fees for its mobile, data-only SMR systems on a per-subscriber basis as a CMRS provider. However, as the Commission has recognized, SMR providers, which previously were regulated as Private Radio services, paid regulatory fees for the entire term of their authorizations in their initial application fee.² Consequently, and to avoid imposing double regulatory fees on these licensees, the Commission determined that "any licensee that converts from private to CMRS and has paid its fees in advance for a period of years may file a request for refund with its initial CMRS regulatory fee payment."³

RMD agrees that licensees should not be required to pay regulatory fees twice for the same period — once as Private Radio services and once as CMRS. No

¹ See CMRS Second Report and Order, 9 FCC Rcd 1411, 1450-51, 1510 (1994) (effective in August of 1996).

² See In re Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 1996 WL 425068 (July 5, 1996) ¶¶ 18-21; Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5349 (1994).

³ In re Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 1996 WL 425068 (July 5, 1996) ¶ 21; cf. also In re Implementation of Section 9 of the Communications Act, 9 FCC Rcd at 5349 (FCC would credit licensees for advance fee payments).

mention of this issue, however, appears in the NPRM. RMD requests, therefore, that the Commission provide in the Report and Order in this proceeding, or in a separate public notice released concurrently therewith, procedures for licensees in reclassified services to obtain a refund of, or credit for, regulatory fees paid in advance.

Second, in paragraph 39 of the NPRM, the Commission references a proposal by Destineer, Inc. ("Destineer") that a CMRS Messaging Service fee category be established to replace the CMRS One-Way Paging fee category. Destineer claims that the new fee category is needed because, with the exception of two-way paging services, the CMRS Mobile Services fee category includes only broadband services that provide two-way interactive voice communications. Thus, Destineer asks that the Commission create a fee category that will include "all narrowband services."⁴

Although RMD agrees that a new CMRS Messaging Service fee category should be created, the distinguishing feature of the licensees encompassed within the new category should not be that they are providing service using narrowband technologies, but that they are providing non-voice services. To the extent that some CMRS services consume fewer Commission resources, they do so because of the nature of the services offered and the customers who use them.

For example, RMD operates SMR systems that provide mobile data services that do not offer real-time, two-way switched voice service. As such, its systems currently are excluded from the Commission's definition of "covered SMR" systems for purposes of the Commission's CMRS resale (CC Docket No. 94-54), number portability (CC Docket No. 95-116), enhanced-911 (CC Docket No. 94-102), CMRS roaming (CC Docket No. 94-54), and RF emissions hazards (ET Docket No. 93-62) rules.⁵ Accordingly, regulatory fees paid by RMD's non-voice systems should be lower than those paid by "covered SMR" and other systems that provide real-time, two-way switched voice service to the public.

⁴ NPRM ¶ 39.

⁵ The Commission has defined "covered SMR" systems as 800 MHz and 900 MHz SMR licensees that hold geographic area licenses and incumbent wide area SMR licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network. In re Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, First Report & Order (rel. July 12, 1996) ¶ 19.

Moreover, the "principles of regulatory parity dictate that fees for similar services be equivalent."⁶ Thus, if a new fee category for CMRS Messaging Services is to be created, the licensees included within it should be determined based upon the nature of the services that they provide and not the technology used to provide those services. Given that the Commission already has drawn the distinction between real-time, two-way switched voice CMRS services and non-voice services for purposes of the CMRS rules referenced above, RMD suggests that it continue to use that distinction to differentiate between CMRS Mobile Service and CMRS Messaging Service.

Respectfully submitted,

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⁶ Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 7988 ¶ 315 (1994).